MOTION FILED
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No. 04-87

IN THE
Supreme Court of the United States

KOYO SEIKO CO., LTD., *et al.*,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

MOTION OF THE GOVERNMENT OF JAPAN FOR LEAVE TO FILE A BRIEF AMICUS CURIAE IN SUPPORT OF PETITIONERS

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Pursuant to S. Ct. R. 37.2(b), the Government of Japan hereby files this motion for leave to file a brief amicus curiae in support of petitioners. The parties to the proceeding that are listed in the S. Ct. R. 14(b) statement of the petition for a writ of certiorari—petitioners Koyo Seiko Co., Ltd. and Koyo Corporation of U.S.A., and respondent the United States of America—consented to the filing of Japan's brief. The Timken Company is not listed as a party to the proceeding in the petition or named in the caption of the petition, but was a party to the proceedings below. After the filing of Japan's brief, Timken informed Japan that it does not consent to the filing of Japan's brief. In response, Japan promptly filed this motion for leave to file its brief.

As set out in the Statement of Interest in Japan's brief, Japan has a direct and substantial interest in this case. The Department of Commerce's use of "zeroing" has resulted in the imposition of increased antidumping duties against petitioners Koyo Seiko Co., Ltd., a Japanese manufacturer of automobile parts, including tapered roller bearings, and Koyo Corporation of U.S.A., its wholly-owned U.S. subsidiary. Several similar cases involving Japanese bearing manufacturers are currently pending in U.S. courts. Japan estimates that the combined amount of increased antidumping duties resulting from Commerce's practice of "zeroing" in each of these cases is nearly $14 million. That figure will only continue to increase so long as Commerce continues to treat negative dumping margins as "zero."

But the excessive antidumping duty liability facing these Japanese companies is not the only matter that concerns Japan. The World Trade Organization ("WTO"), of which both the United States and Japan are Members, has repeatedly held that the practice of zeroing violates the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Anti-Dumping Agreement")—an international agreement to which the United States is

bound. Indeed, just recently, the WTO reaffirmed its determination that zeroing violates the Anti-Dumping Agreement in a proceeding brought by Canada against the United States. *See* Report of the Appellate Body, *United States – Final Dumping Determination on Softwood Lumber from Canada*, WT/DS264/AB/R (Aug. 11, 2004) ("*US – Softwood Lumber*"). Japan is thus deeply concerned that the excessive antidumping duty liability facing Koyo and other Japanese manufacturers is based on a practice that has been found to violate an international agreement that is binding on the United States. Moreover, in reviewing that practice, the Federal Circuit below refused to interpret the Tariff Act so as to avoid a violation of international law.

The Government of Japan believes that its views would be of material assistance to the Court in considering whether to grant certiorari in this case, and thus respectfully requests that the Court grant this motion and consider the matters raised in its brief amicus curiae.

Respectfully submitted,

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